8th ed., § 35; 2 Morawetz Corp., 2nd ed., § 962. An unconstitutional enactment being void, and no other statute having conferred authority on the agent of the State to act, it would seem to follow that the right of the insurance company to continue acting within Kentucky was protected by the common law, and the agent should be enjoined to prevent injury to rights already vested under former constitutional legislation. *Niagara Fire Ins. Co.* v. *Cornell* (1901) 110 Fed. 816. This is not a denial of the absolute power of the State to exclude foreign corporations, but an insistence upon the right of a foreign corporation, once admitted, to remain until properly expelled.

CONSPIRACY AS A TORT.—Whether conspiracy exists as an independent tort is still a much mooted question, and the courts and text-writers seem fairly evenly divided. DWIGHT, C., in *Place* v. *Minster* (1875) 65 N. Y. 89, defines conspiracy, so far as it justifies a civil action for damages, as "a concert or combination to defraud or to cause other injury to person or property, which actually results in damage to the person injured or defrauded," and this definition clearly states the position of the authorities favoring the existence of conspiracy as a substantive wrong. *Griffith* v. *Ogle* (Pa. 1806) 1 Binney 172; *Gregory* v. *Duke of Brunswick* (1843) 6 Scott N. S. 809; *Raleigh* v. *Cook* (1883) 60 Tex. 438; Bishop Non-Contract Law, §362; Addison, Torts, 3d ed., 589. But, on the other hand, there is considerable judicial opinion to the effect that a conspiracy gives rise to no distinct right of action. According to this view the concert or combination is not the gravamen of the action, but may be introduced only in aggravation of damages. *Hutchins* v. *Hutchins* (N. Y. 1845) 7 Hill 107; *Parker* v. *Huntington* (Mass. 1854) 2 Gray 124; *Van Horn* v. *Van Horn* (1890) 52 N. J. L. 284; Pollock on Torts, 5th ed., 304. In a recent case in the Appellate Division of the Supreme Court of New York this question was raised by a demurrer for misjoinder of causes of action. The complaint alleged a conspiracy on the part of the defendants and set out slander, malicious prosecution and abuse of process as overt acts committed in pursuance of the agreement. The Court overruled the demurrer. *Green* v. *Davies* (1905) 91 N. Y. Supp. 470.

As an indictable offense conspiracy was recognized at common law from the earliest times, *State* v. *Buchanan* (Md. 1821) 5 Har. & J. 317, and even though an act might not be indictable if done by an individual, a combination to do that act was held to be indictable. *Timberly & Childe* (1662) 1 Sid. 68; *Rex* v. *Journeymen Tailors* (1721) 8 Mod. 11. The civil action of the early common law was under a writ of conspiracy; but this writ was allowable only in cases of conspiracy to have a man indicted for treason or for a felony punishable with death, 2 Selw. N. P. 806, and its operation was thus confined until the statute 21 Ed. I was enacted, which greatly enlarged the scope of private remedies against conspirators. The action under this statute was in the form of an action on the case. Under it civil actions were extended to all cases for which a criminal indictment would lie, provided the plaintiff had sustained actual damage (Archbold's N. P. 594), and the effect of the statute seems

to have been thus to extend the scope of the old action and at the same time to have created a new action. *Saville* v. *Roberts* (1698) 1 Ld. Raymond 374. The new action might be brought against one or more defendants; 5 Vin. Abr. 416; and when brought against more than one, although there was still an allegation of conspiracy, the action seems to have taken the form of an action against joint tort feasors, rather than against conspirators, and a single defendant might be found guilty. *Skinner* v. *Gunton* (1670) 1 Saund. 228; see 4 COLUMBIA LAW REVIEW 367. The authorities do not hold that no action for conspiracy proper could be brought under the statute. They seem to recognize that in practice this was done; *Saville* v. *Roberts*, supra; but it is probable that the greater likelihood of success under the new action for malicious prosecution caused the action for conspiracy to be less frequently sued.

Conspiracy, at least as an element of damages, seems to be recognized by the modern authorities who deny its existence as a tort; but while the statute required special damage to be proved to maintain the action, that fact would not seem to make damage the gist of the action any more than in the case of deceit, malicious prosecution and slanderous words not actionable per se. *Hood v. Palen* (1848) 8 Pa. St. 237. Where the object of the conspiracy is to be effected by a series of independent torts, it would seem that while each separate tort would give rise to a right of action, these individual torts could be merged in the more comprehensive tort of conspiracy, and this result has been reached in the strike cases. See 1 COLUMBIA LAW REVIEW 123; 2 id. 37, 124, 400; 3 id. 426. The marked modern tendency, as shown by these cases, to find a tort in the mere combining, though none would be found were the act done by an individual, seems to be a recognition in civil law of what has long been punishable in criminal law, and to be within the scope of the statute 21 Ed. I, though not within the favored practice under it. See *State* v. *Heugin* (1901) 110 Wis. 189; *Hawarden* v. *Youghiogheny & L. Coal Co.* (1901) 111 Wis. 545; *Quinn Leathem* [1901] A. C. 495.

COMPENSATION IN ADMIRALTY FOR TORTS RESULTING IN DEATH.—The natural justice of a recovery for torts resulting in death has had a strong influence on judges sitting in admiralty courts in this country. Prior to 1886, decisions, under general maritime law, that such an action would survive, had been rendered in nine district courts, in spite of the concession that, according to English authorities, admiralty could give no relief; but in that year these decisions were overruled in the Supreme Court. *The Harrisburg* (1886) 119 U. S. 199. In a recent case an attempt has again been made to impose this liability by applying the statute of the State where the vessel was owned, though the tort was committed on the high seas. In re *Petition of Old Dominion S. S. Co., etc.* (1904) 32 N. Y. Law J. 971.

There seems to be no question but that the law of the flag governs on a vessel until it comes within another jurisdiction, whether it be explained on the fiction of extension of territory, *Crapo* v. *Kelly* (1872) 16 Wall. 610, or on the ground of convenience or necessity,